



# WHY ADR IS SMART BUSINESS



## PANEL DISCUSSION

April 17, 2001



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# WHY ADR IS SMART BUSINESS

- Corporate Contractor Perspective – Bob Ingersoll, Vice President Contracts and Pricing, Boeing
- Wall Street View – Wolfgang Demisch, Managing Director, Dresdner Kleinwort Wasserstein





# ADR – Tools for a Successful Settlement

- Scheduling Analysis – Greg Crider or Jennifer Oen, Directors at Peterson-Barrington
- Independent Pricing in ADR – Brian Hammer, Chief Financial Officer, Tucker Alan Inc

A collage of various Boeing aircraft and space-related imagery. In the top left, a large commercial jet is shown. In the top right, a satellite is in orbit. In the center, a military transport plane is flying. In the bottom left, a Boeing 777 is shown. In the bottom right, a fighter jet is shown. The background is a mix of blue, orange, and purple hues, suggesting a sunset or sunrise sky.

# Alternative Dispute Resolution The Boeing Company

**Robert J. Ingersoll**  
Vice President,  
Contracts & Pricing  
The Boeing Company





# Alternative Disputes Resolution

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- ***Why ADR?***
- ***Gunship Experience with ADR***
- ***Boeing's Commitment***
- ***Key elements for ADR Success -  
Using ADR for a Win-Win***





## Why ADR?

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- No perfect contracts - unforeseen problems occur
- ADR Facilitates open information exchange
- Involves stakeholders - increases buy-in
- Focuses on facts
- Provides structured environment/process
- Reduces adversarial nature of conflict management
- Dispute cycle time reduction and cost avoidance
- Improves long-term partnering



## Gunship ADR

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**The ADR approach facilitated moving long standing dispute issues to resolution...**



- 10 years in “pouring cement” around our respective positions
- Affordability, cycle time and the relationship were blurred by past attitudes and litigation process
- 3 years in FCC - once ADR identified, settlement reached in 6 months





## Why ADR Worked

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- Participation by high level executives on both sides with limited prior program ties
- Environment of mutual respect & dedication at program management level
- Well-developed document base existed
- Availability of key program personnel
- Open exchanges by all involved
- Knowledgeable, well respected & truly neutral mediator



## Boeing's Commitment

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- **Boeing ADR Agreements:**
  - **Initial company to execute Air Force “Overarching Agreement for ADR”**
  - **CPR pledge agreement signed**
- **Boeing working to deploy ADR approaches company-wide**
  - **Targeted for application on all programs**
  - **Engaging suppliers in use of ADR**
  - **Using ADR for employee/company disputes**
  - **Process Councils have a Stakeholder responsibility**



## Key Elements for ADR Success

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- Commitment from Leadership
- Re-enforcing attitude & behavior
- Take the right issues into ADR
- Training and awareness
- Keep the ADR process simple (user friendly)
- Fund & resource the process
- Promote common sense resolution
- Success: win-win resolutions!



## **Wall Street View**

Wolfgang Demisch, Managing Director,  
Dresdner Kleinwort Wasserstein



**Dresdner Kleinwort Wasserstein**

# **Air Force/NDIA ADR Conference: *Why ADR Is Smart Business***

## **The Expert's Role in the ADR Process**

*Jennifer Oen, Director  
Greg Crider, Director*

*Peterson Barrington Consulting*

*San Antonio, TX - April 17, 2001*

# Key Elements for ADR Success

- **Adequate Preparation**
- **Effective Presentation**
- **Accurate Litigation Risk Assessment**



# Adequate Preparation

## ➤ Schedule Experts:

- Analysis of issues
- Identification of impact (“causal link”)
- Assessment of responsibility for delay

## ➤ Cost Experts:

- Quantification of damages

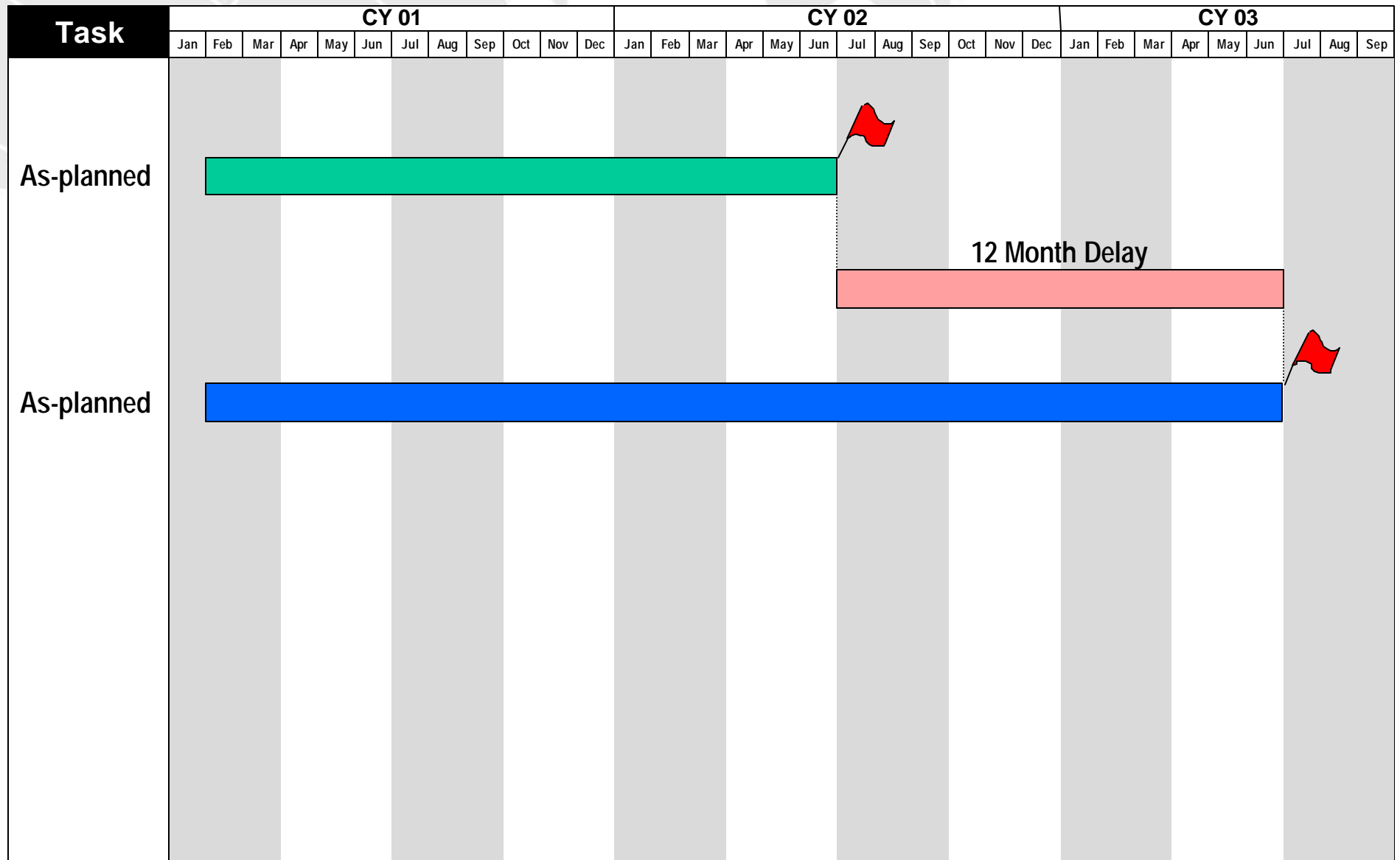
***Objective,  
independent  
assessments of***  
➡ ***causation***  
➡ ***schedule impact***  
➡ ***financial impact***

# Effective Presentation

## ➤ Role of Schedule Expert

- Assessment of “As-Planned” schedule
- Assessment of “As-Built” schedule
- Identification of critical path
- Analysis of issues
- Assessment of responsibility for delay and disruption

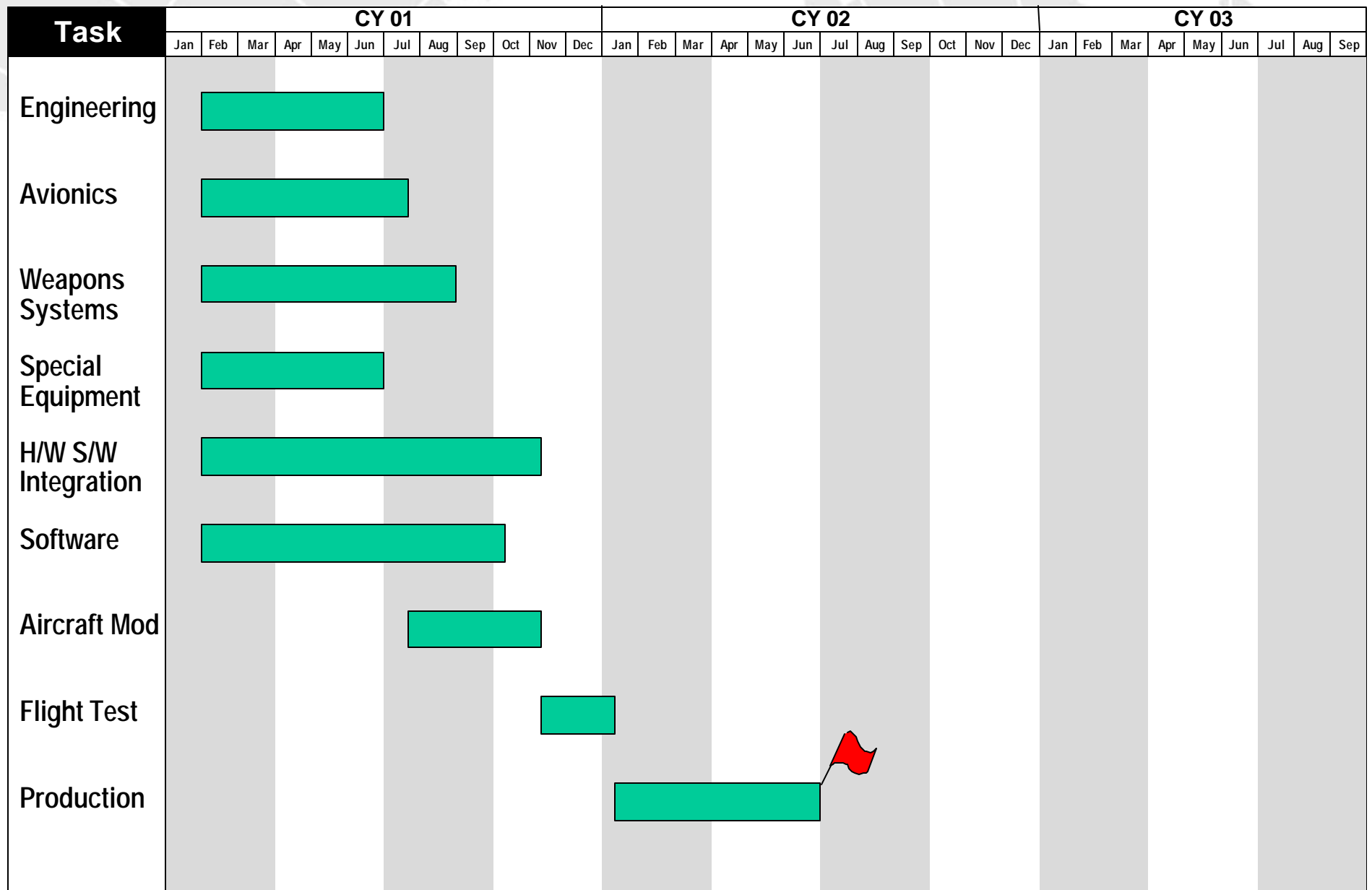
# Schedule Expert's Role





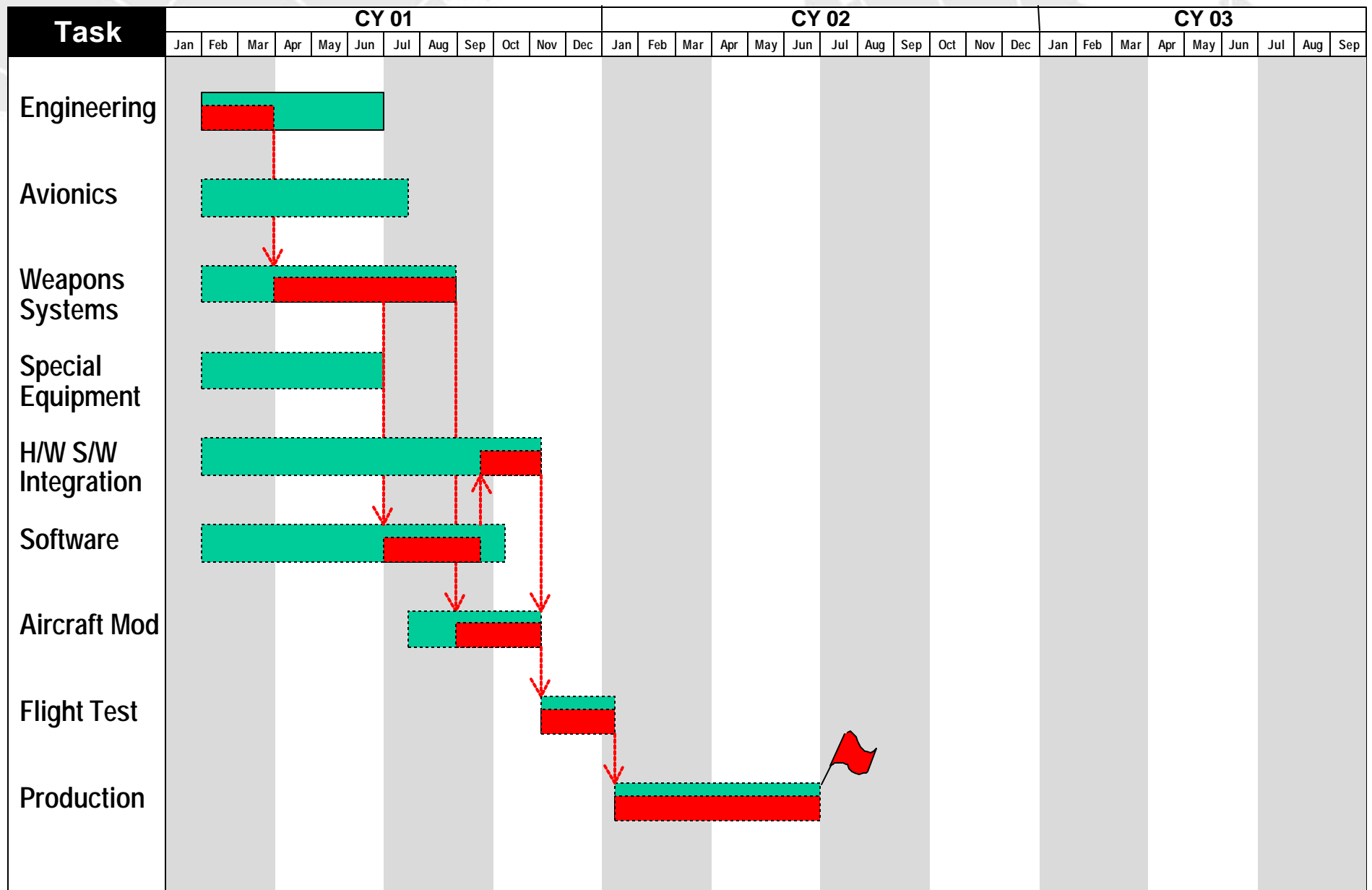
# Schedule Expert's Role

*As-planned*



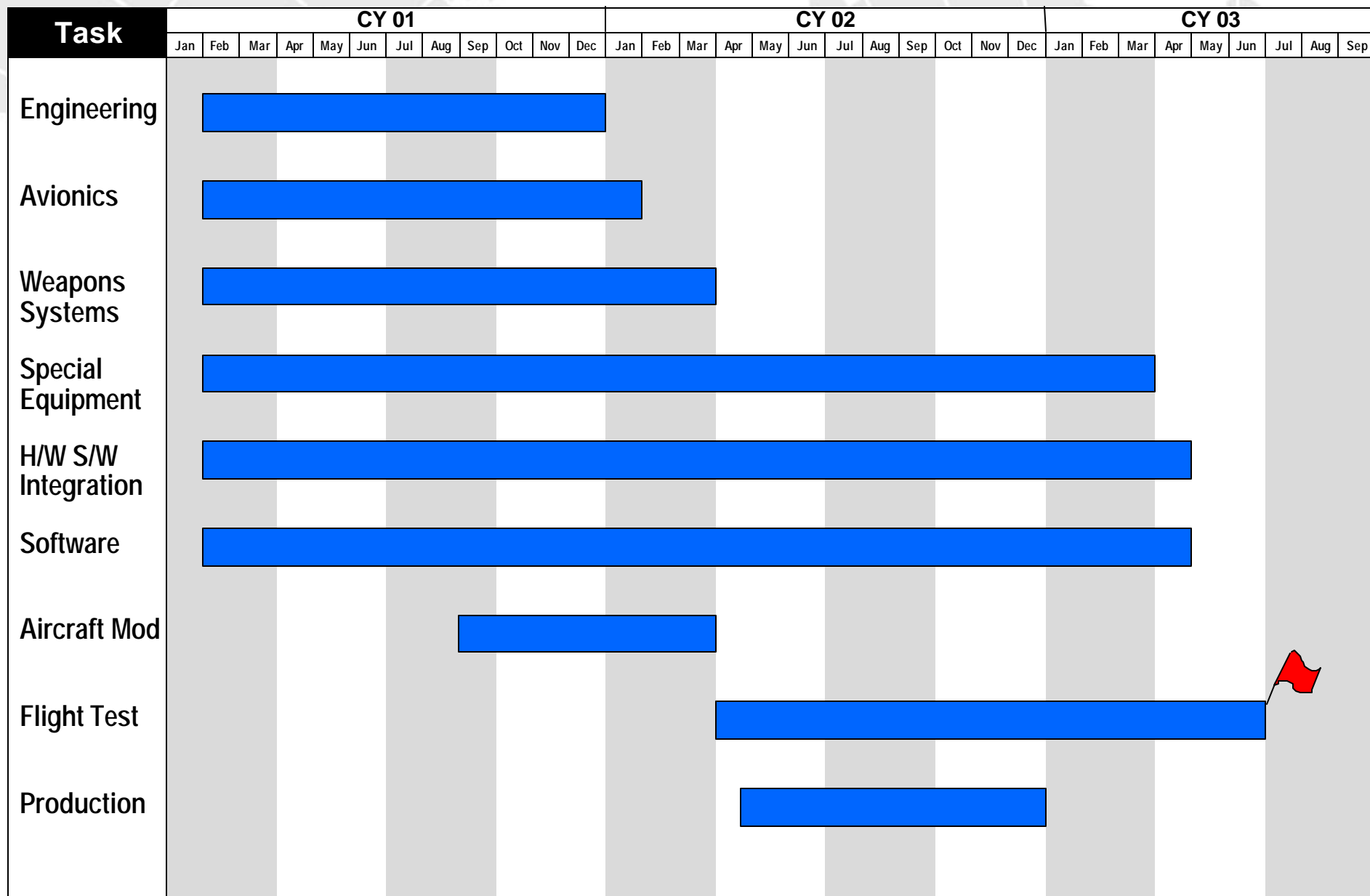
# Schedule Expert's Role

*As-planned Critical Path*



# Schedule Expert's Role

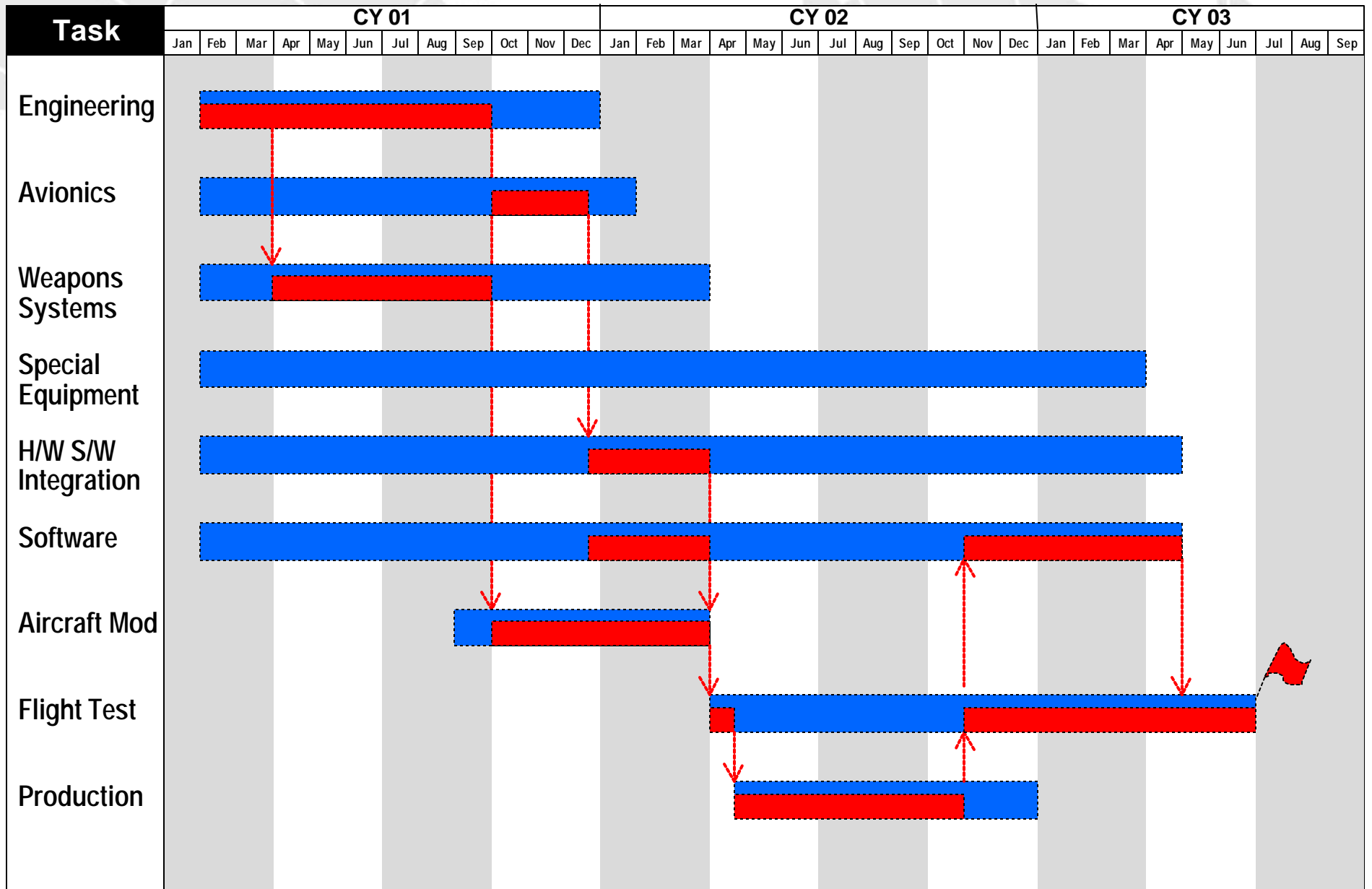
*As-Built*





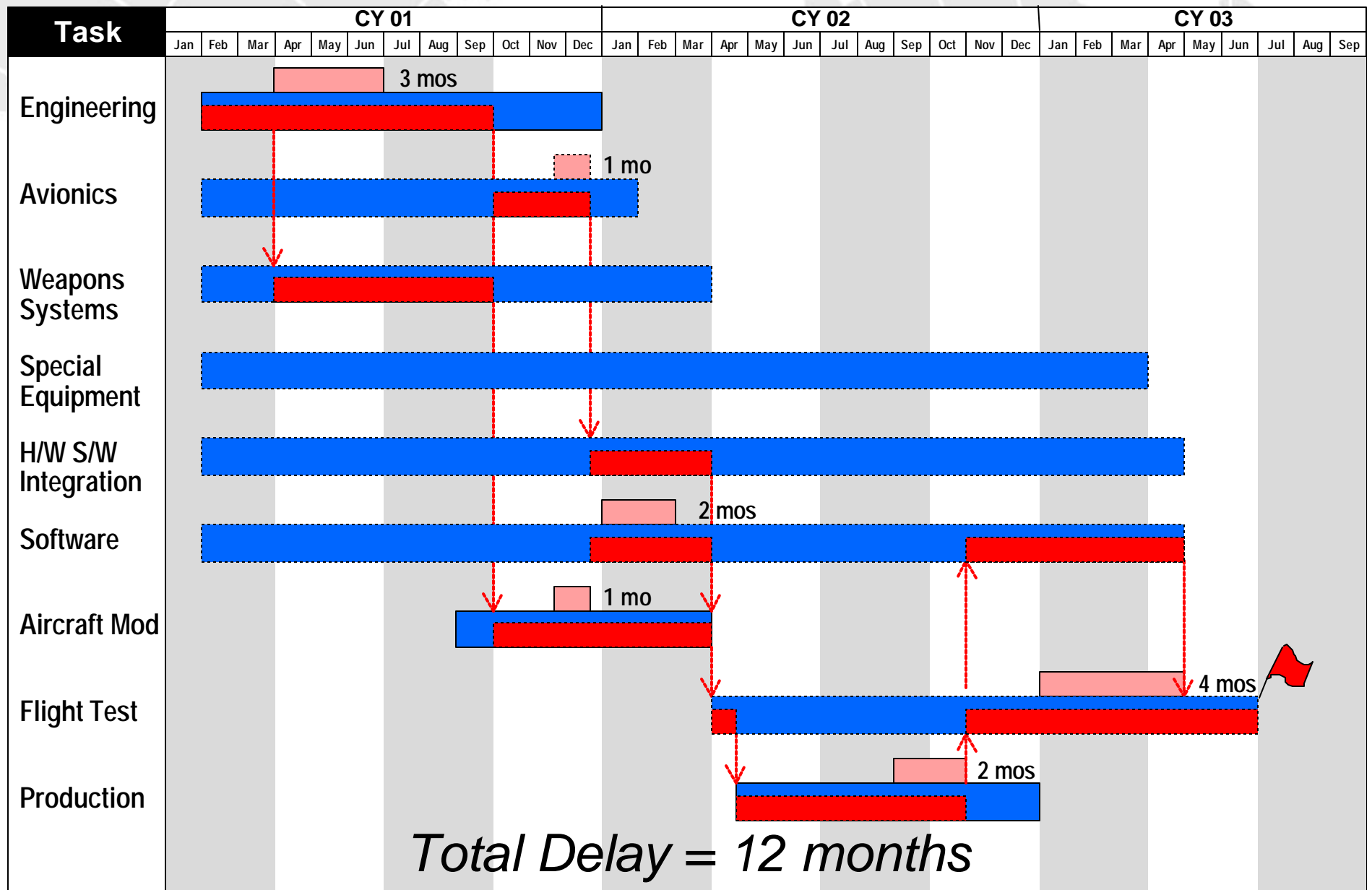
## Schedule Expert's Role

## As-Built Critical Path

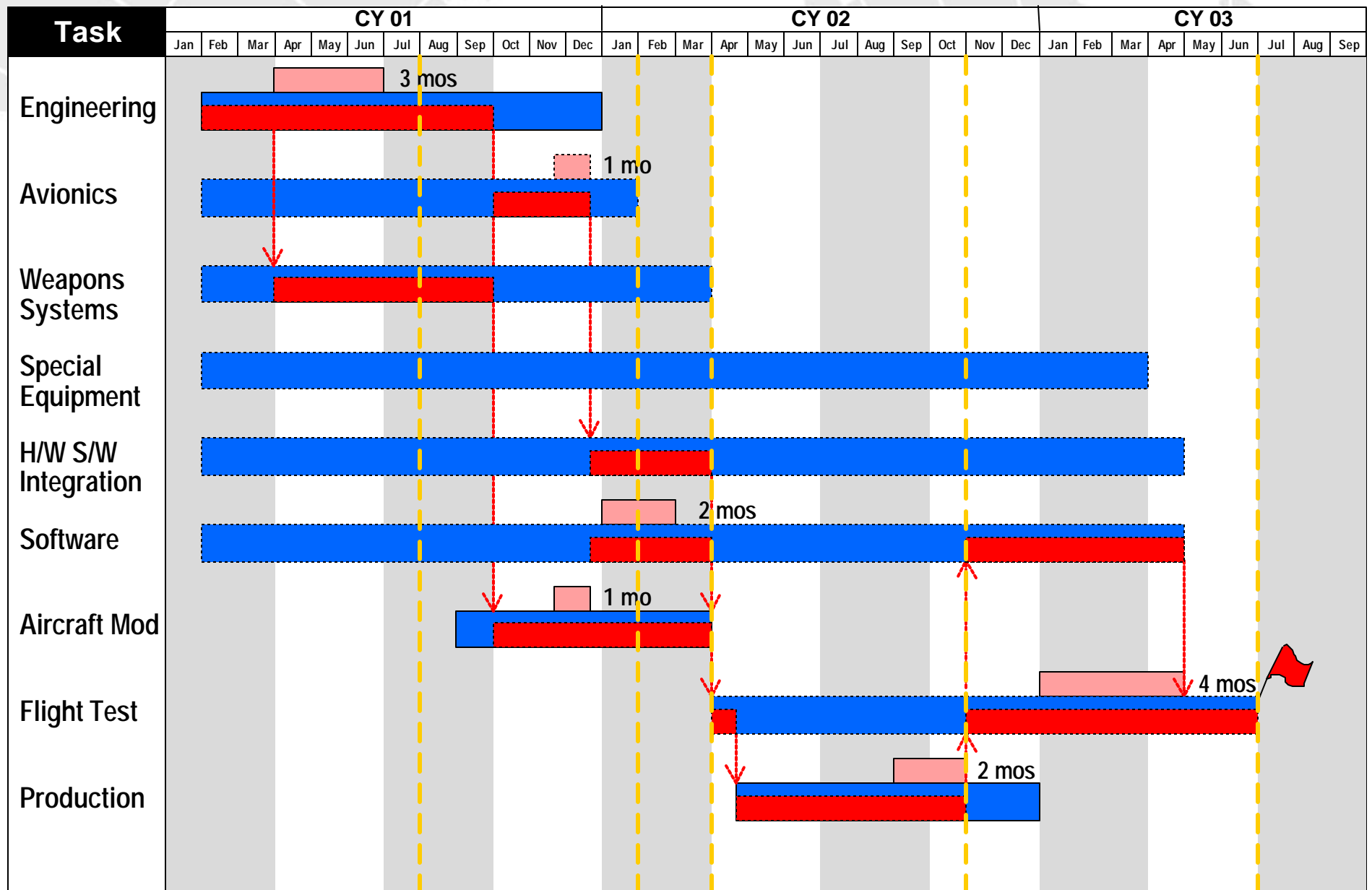


# Schedule Expert's Role

## As-Built Delay Quantification

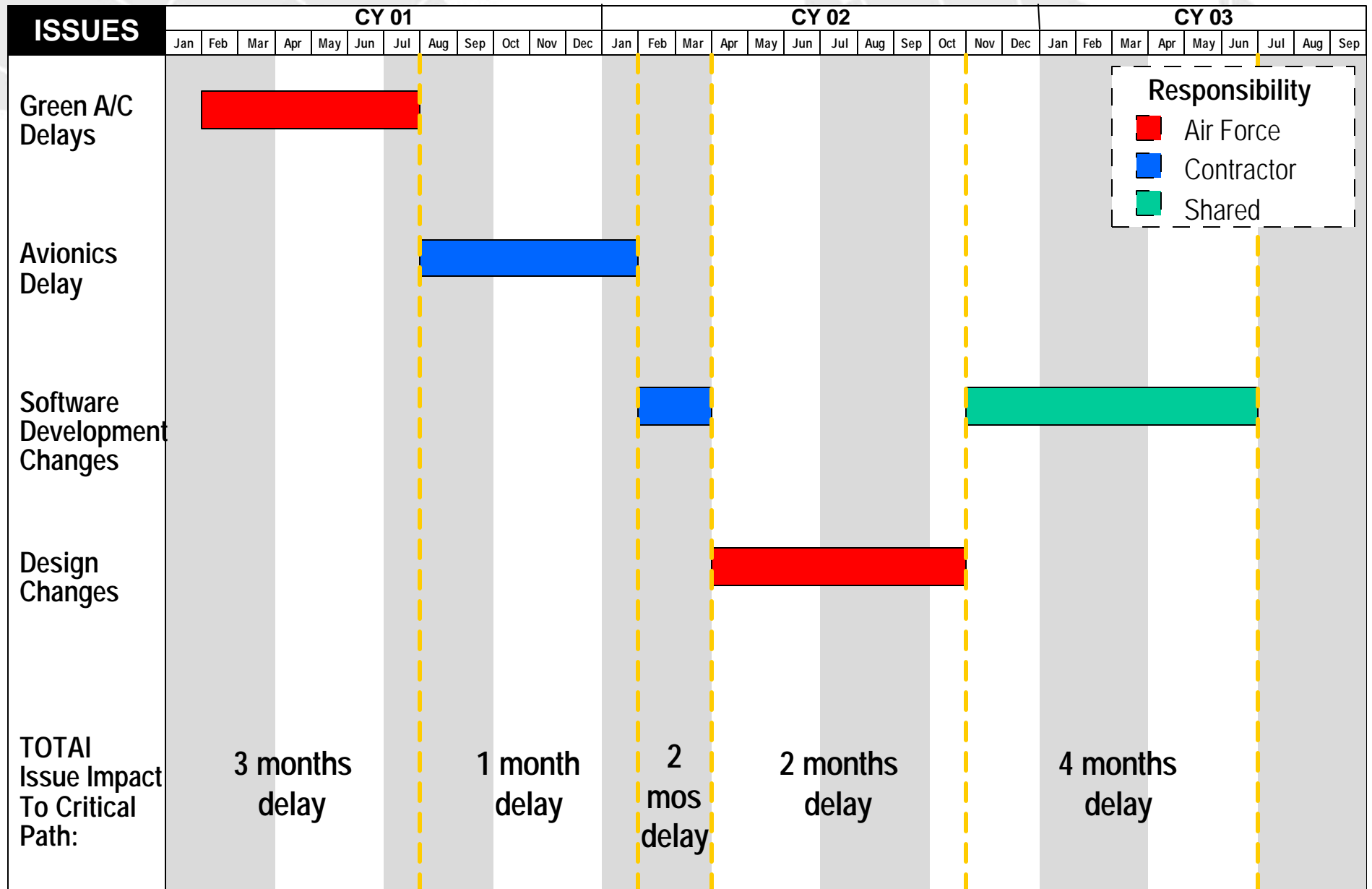


## As-Built Delay Quantification



# Schedule Expert's Role

## Issue Analysis and Causation





# Accurate Litigation Risk Assessment

- Combined effort of company, counsel and outside experts
- Realistic assessment of potential litigation risk associated with each issue/cause of action
  - Legal/entitlement risk
  - Quantum/pricing risk
- Basis for making/assessing settlement offers

# Alternative Dispute Resolution

**Brian M. Hammer**  
**Chief Financial Officer**  
**TUCKER ALAN INC.**

# Topics

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- What Makes ADR Successful?
- How Does An Independent Assessment Benefit The ADR Process?
- Improving Linkage Between Entitlement, Causation And Pricing
- Some Differences Between Litigation And ADR

# What Makes ADR Successful?

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- Both Parties Willing To Have Open Discussions
- Decision Makers Are Motivated And Have Authority To Settle Case
- Sufficient Time At ADR For Each Side To Tell Its Story
- Proper Focus On Big Ticket Issues
- Neutral Mediator / Arbitrator
- Proper Timing



# Using Independent Assessments In The ADR Process

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- Independent Parties Can Include
  - Internal “Non-Advocate” Review Teams
  - Outside Counsel
  - Outside Consultants
- Perform Assessments Prior To ADR
- Provide An Impartial View Of Case Strengths And Weaknesses To Decision Makers

# What Do Independent Parties Bring To The Process?

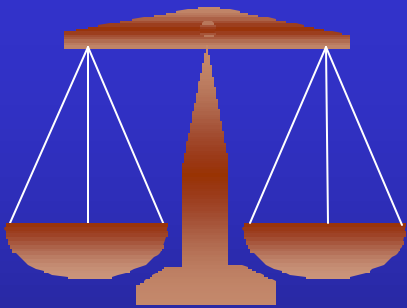
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- ADR Experience
- An Understanding Of Litigation Risks / Likely Outcomes
- Ability To Communicate Complex Issues In Simple Terms
- Alternative Approaches And Solutions
- Independence That Can Help Break Through Communication And Trust Issues

# Elements Of A Claim

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**Entitlement** → **Causation** → **Pricing**



# Linkage Between Entitlement, Causation And Pricing

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- Entitlement And Causation Determine Appropriate Pricing Methodology(ies)
  - Total Cost, Modified Total Cost, Discrete, Other
- Effort Should Be Balanced Between Entitlement, Causation And Pricing Issues
- Don't Waste Time On Issues With Little Or No Financial Impact



# The Two-Pronged Approach To Improving Linkage

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- Two-Pronged Approach
  - Price Issues Identified During The Legal Review
  - Quantify Cost Growth By Function, Task, Time And Determine Causes Of Growth
- Perform Overall Reconciliation Of Cost Growth, Claimed Costs And Unclaimed Costs By Element
- Don't Miss The “\$500 Million” Gorilla

# Some Differences Between Litigation And ADR

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- Litigation “Filters” Communications
  - ADR Allows Decision Makers To Hear Directly From Attorneys, Fact Witnesses And Experts
- Litigation Discovery Is Formal And Restrictive
  - ADR Often Allows Subject “Experts” To Discuss And Resolve Issues Face-To-Face
- Analyses Fully Supported By Time Of Trial
  - ADR Often Takes Place “Mid-Stream”
  - Requires Flexibility On Both Sides

